STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Robert K. & Heidi Linn Folkestad Petitioners-Appellants. **v.** **Warren County Board of Review,** Respondent-Appellee.	**ORDER** **Docket No. 11-91-0119** **Parcel No. 01-000-09-0222**

On October 12, 2011, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants Robert K. and Heidi Linn Folkestad were self-represented. County Attorney Jon Criswell is counsel for the Board of Review. County Assessor Brian Arnold represented it at hearing. Both parties submitted evidence and testimony in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

The Folkestads, owners of a property located at 2252 N Scotch Ridge Road, Carlisle, Iowa, appeal from the Warren County Board of Review regarding their 2011 property assessment. The 2011 assessed valuation is $354,700, allocated as $72,500 to the land and $282,200 to the improvements. The property classification was changed from agricultural to residential for the 2011 assessment.

The Folkestads protested to the Board of Review claiming (1) their assessment was not equitable as compared with assessments of other like property under Iowa Code section 441.37(1)(a); (2) the subject property was assessed for more than the value authorized by law under section 441.37(1)(b); (3) the subject property was not assessable, is exempt from taxes or is misclassified under section 441.37(1)(c); (4) there was an error in the assessment under section 441.37(1)(d).

stating, essentially, the error was misclassification; and (5) there had been a change downward in the value since the last assessment under sections 441.37(1) and 441.35. The Board of Review denied the protest.

The Folkestads then appealed to this Board, reasserting the single claim that the subject property is misclassified. They seek $101,600 in total relief and assert a correct assessed value of $253,100, allocating $8000 to the land; $241,200 to the improvements; and $3900 to the ag building.

The subject site is 7.9 acres, and a pond takes up approximately two of those acres. Situated on the remaining acreage is a one-and-a-half-story, frame single-family residence built in 1910 with 1821 square feet of living area; a full, unfinished basement; and an 864 square-foot, detached garage built in 1948. This dwelling has 158 square-feet of open porch area and 112 square feet of concrete patio. It was referred to as the "old farm house." There is also a second single-family home on the site. This dwelling is a 1288 square-foot, one-story frame, built in 2004 with a full walk-out basement having 500 square-feet of finish. There is a 672 square-foot, attached garage; a 504 square-foot, wood deck; a 240 square-foot, open porch; and a 350 square-foot, concrete patio. Additionally, there is a 3456 square-foot, steel utility building built in 1990, with 312 square feet of attached lean-to.

The Folkestads have owned the subject property since 1990. It is surrounded by agricultural properties. Folkestads originally lived in the old farm house and operated a Christmas tree farm. They built a new residence on the subject site in 2004 and now rent the older dwelling for $850 per month. Robert Folkestad (Folkestad) testified the old farm house is in poor condition, and it is their intent to eventually move the older dwelling off the site or tear it down once the current tenant's high-school-age children graduate.

Folkestad testified that in 2005/2006 he met with Dave Ellis, the former Warren County Assessor, about his intent to get out of the Christmas tree farm business, start a vineyard, and move or demolish the old farm house on the parcel. Folkestad stated it was about this time Ellis took the

subject site out of Forest Reserve and classified it agricultural. Brian Arnold, the current Warren County Assessor, testified the subject property was not re-classified agricultural until 2009 and that it had been residentially classified prior to then. The property record card confirms the change from residential to agricultural classification occurred for the 2009 assessment as the land assessment was significantly reduced from $47,300 in 2008 to $8000 in 2009. This change reflects a higher land assessment based on market value and a lower assessment based on productivity and net-earning capacity. Arnold also believed the reason for the 2009 reclassification was based solely on Folkestad and Ellis's conversations and that no grapes were ever actually grown on the property.

Folkestad testified he initially planted approximately two acres of grapes using old Christmas trees as supports. He trimmed the branches from the trees, bored holes through them, and threaded number nine wire between them to support the grapes. This endeavor eventually failed as the trees rotted, fell down, and had to be removed within two years. Even after the Christmas tree trellises fell down, Folkestad asserts grapes continued to grow on the property where he had planted them; they were just not trellised. If the grapes were not trellised, they would not have been very visible.

According to Folkestad, his vineyard suffered another setback in the fall of 2010, when approximately one acre of grapes was destroyed by a chemical drift and over-spray from a nearby field. Folkestad repeatedly stated this over-spray occurred in the fall of 2010. However, Assessor Brian Arnold appeared to question Folkestad's statement. In Arnold's opinion, if the over-spray occurred, it likely happened in the fall of 2009 based on his observations of the property from the road in the summer and fall of 2010. Arnold contended if the over-spray occurred in 2009, Folkestad could have replanted grapes in the spring of 2010, which would have been observed. However, we note, if the over-spray occurred in 2010, it would not have been reasonable for Folkestad to have replanted until the spring of 2011, especially considering it is nearly impossible to plant anything in the ground in Iowa during the winter months.

There also appears to be confusion or inconsistencies regarding how long, if at all, prior to 2011 grapes have been on the property. Folkestad testified that he started growing grapes sometime around 2005-2006. If the Christmas tree trellises fell down after about two years, it would have occurred sometime in 2008. The reclassification of the property from residential to agricultural occurred in 2009. The record supports a finding that grapes have been in the ground on the property through the fall of 2010 when the overspray occurred. This is true even though they were not trellised the entire time; and Folkestad admitted trellising would have been necessary for the grapes to actually produce. At the earliest, Folkestad planted grapes in 2005 or 2006. At the latest, he began the vineyard in 2008. Arnold testified he viewed the property a couple of times in 2010 and in the spring of 2011 and believed there were no grapes during this period. However, Folkestad provided exhibits showing grapes growing in the grass on the property. These grapes were not trellised and would not have been visible from the road. Because the grapes may not have been visible from the road does not mean they did not exist. Furthermore, the uncontroverted record shows grapes are a labor-intensive crop and clearly do not produce the first year, or even second year, they are in the ground. Typically it takes three to five years before the vines produce a crop that can be harvested. Also, if the grape vines that were planted were from cuttings, a method which it appears Folkestad was familiar with and had used, those plants would be quite small.

George Fischer testified on behalf of Folkestad. He generally explained the vineyard business, and explained his understanding of Folkestad's vineyard. Fischer's vineyard was the largest in the state of Iowa, roughly seventy-six acres, until early 2011 when he decided to get out of the business for personal reasons. Fischer and Folkestad have been friends and acquaintances for twenty-five years and it is partially through this connection that Folkestad knew to contact Fischer about acquiring his equipment and plants. Fischer testified he had an ongoing dialogue – asking/answering questions – with Folkestad about growing a vineyard for several years prior to selling him the equipment.

Specifically, Fisher remembers warning Folkestad that the Christmas tree trellises Folkestad was going to try would not likely work. Folkestad purchased plants and materials from Fischer in the spring of 2011. Folkestad testified he had approximately $5000 invested in steel posts alone. Folkestad provided several photos of the new posts, bamboo poles, anchors, wires, and grape clippings. These plants show agricultural activity that occurred in the spring of 2011, and according to Folkestad were a continuation of his ongoing vineyard.

Fisher also testified that a mature vineyard averages about three tons of grapes per acre and one ton of grapes sell for approximately $1000. He noted these were averages and used to predict futures, but that a given vineyard might see slightly different results depending on the year.

Folkestad testified his vineyard had a slow start-up due to finances prior to 2011. He reported high equipment expenses and the need for intense labor in vineyard development. Fischer later confirmed that operating a vineyard is "a very labor intensive profession." It is evident to this Board. that Folkestad began extensively expanding the vineyard in the spring of 2011. At that time he planted somewhere between 1500 and 2000 grapes – 500 plants and approximately 1000-1500 cuttings. He testified to over-planting to insure a sufficient crop for the future. However, the testimony and documents also indicate that approximately two acres of grapes were growing in 2010, prior to the assessment date and before the over-spray problem in the fall of 2010.

Arnold testified he changed the classification back to residential based on notes in the file that indicated the old farm house was to be removed and two acres of grapes were to be planted. Neither of which happened according to Arnold. He asserts the classification was changed "not because of what had changed, but rather because of what had never happened."

Arnold testified that his office does not have an acre requirement for grapes or any other product, but that determination for specialty agricultural classifications are made on a case-by-case basis. We note, however, the Warren County Assessors Office Primary Agricultural Use

Determination Policy provided to this Board states in part: "Nontraditional crops such as grapes or other miscellaneous produce, which require more labor intensive management, will be considered on a case-by-case basis with *a minimum of a two acre use area*" (emphasis added). This minimum vineyard acreage requirement is not a valid criteria for agricultural classification because it imposes restrictions not recognized under state law or administrative rules. Further, we are unaware of any provision of law that permits an assessor's office to adopt its own "rules" or guidelines regarding classification of any real property. The administrative rule says that classification is to be based on the guidelines set forth in that rule. I.A.C. 701-71.1.

Arnold further stated his office considers the "primary use" of the property is residential. Arnold based his decision of primary use on the fact that there are two residences on the site, that there is a large pond (roughly two acres), and that based on his limited observations there was no visible evidence of a vineyard. Arnold also testified that given the rental income from the old farm house, no profit from the vineyard activity would cancel that out. It appears Arnold was focusing on the income generating potential of the old farm house and surrounding property. Additionally, we note that a pond does not factor into the availability of the site for development or use, and the presence of a homestead(s) does not prohibit agricultural classification. We also note that Arnold did not physically inspect the subject site. When questioned about his lack of an inspection, Arnold stated his office did not request an inspection because it knew based upon aerial photography and viewings from the road that there was, at the most, less than an acre of grapes and there were two homesteads.

While we understand Arnold's certainty that the site was being used for residential purposes, we believe there should have been an on-site inspection, perhaps prior to the hearing before the Board of Review and particularly prior to the hearing before this Board, to verify the existence and size of the vineyard because neither the residences nor the number of acres of grapes alone are determinative factors in a classification decision.

Folkestad's Schedule F Profit or Loss from Farming form show an expenditure in these three years. Although the recognized principal product on these forms is listed as "TREE FARM," it is clear from Folkestad's uncontroverted testimony that the tree farm essentially ended in 2003 following a personal injury in a motorcycle accident. Based on testimony, it would not make sense to purchase additional trees after that date. Additionally, Folkestad continues to expand the vineyard purchasing used equipment to properly trellis and planting additional grapes (including some to replace those damaged or killed by over-spray) in the spring of 2011.

Many agricultural classification cases that appear before this Board are fact intensive. While it is a close call, we are convinced Folkestad had started a vineyard of approximately two acres before January 1, 2011, and had plans to expand the operation. It is clear to this Board that Folkestad has renewed his commitment to expand the vineyard in 2011 by purchasing new equipment and additional plants since the assessment date. This is also the primary use of Folkestad's land.

Therefore, we find the subject parcel meets the criteria for agricultural classification as a vineyard as of January 1, 2011, as it is the primary use of the land. Based upon the foregoing, the

Appeal Board finds the correct classification of the subject parcel, as of January 1, 2011, is agricultural.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). However, if property is classified agricultural property it is to be assessed and valued based on its productivity and net earning capacity. Iowa Code § 441.21(1)(e).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as

assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). "Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is 'agricultural' or [residential] is to be decided on the basis of its primary use." *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. Iowa Admin. r. 701-71.1(1).

> By administrative rule, residential property
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> shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule.

I.A.C. r. 701-71.1(4).

> Conversely, agricultural property
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> shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.
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> *Vineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine.*
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> Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

The Folkestads assert their property is misclassified and that its actual classification should be agricultural because they have a vineyard on the property. In addition to the administrative rules, the Iowa legislature has expressly addressed the classification of vineyards. In 2002, Iowa Code section

441.21(12) was adopted and specifically designates vineyards be classified agricultural real estate. This amendment does not impose a minimum acreage requirement, condition classification decisions on zoning laws, or base classification on the use of surrounding parcels to determine whether vineyards are agricultural property. It states:

> Beginning with valuations established on or after January 1, 2002, as used in this section, "agricultural property" includes the real estate of a vineyard and buildings used in connection with the vineyard, including any building used for processing wine if such building is located on the same parcel as the vineyard.

Iowa Code § 441.21(12).

Iowa Administrative rule 701-71.1(3) was also amended to specifically include vineyards in agricultural classification. As previously noted, it directs that "[v]ineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine."

Looking only at the requirement that the primary use of the property be for the production or sale of wine, we find Folkestad was growing grapes on his property as a vineyard as of the January 1, 2011, assessment. Prior to the assessment date approximately two acres of the land was planted; following the assessment date the vineyard has expanded to nearly 2.5 acres (although as of the hearing date, some areas were still not planted, but trellising and prep work had been completed). Although he had not successfully harvested and sold a crop as of this date, grapes had been planted and were being raised with the intent to do so. Testimony shows that it takes three to five years before a decent crop is produced from the grapevines, and therefore it is not unreasonable that Folkestad has yet to sell grapes. Furthermore, we find this was the primary use of the property despite the existence of his homestead and the second old farmhouse, which he intends to demolish soon. We note many farms have a homestead. The property is just shy of eight acres. A pond takes up approximately two acres. On the remaining acres are the two homes, a couple of outbuildings, and the vineyard. Folkestad has prepared the land right up behind the old farm house for planting. The primary use of the *land* is as a

vineyard. Additionally, we note the primary use of the property does not hinge on which use produces more income. *Sevde*, 434 N.W.2d at 881 (noting "an activity which is not a primary use of the property does not become such because it produces more revenue in a particular year than the dominant activity"). Thus, even though the old farm house currently is being rented, it does not make this use more important than the fact that prior to January 1, 2011, approximately two acres of the property had been planted as a vineyard, and after the assessment date nearly 2.5 acres were set aside for Cedar Crest Vineyard.

We also note the administrative rule is not clear as to whether the only consideration for classifying a vineyard is primary use, or if the endeavor must be done in good faith with an intent to profit as well. *See* I.A.C. r. 701-71.1(3). The rule, when amended, did not insert vineyard into the existing language; rather, it added a separate, unnumbered paragraph, to the agricultural classification subparagraph. This unnumbered paragraph does not reference good faith or an intent to profit. In an effort to be thorough, and without concluding whether these requirements are also necessary considerations to determine whether a property should be classified agricultural, we will address them.

The term "good faith" has not been defined by Iowa statute or administrative rule and no "factors" to determine "good faith" have been adopted by statute or rule. The term "good faith" has been defined by the courts, however, as "honesty of intention" or "subjective honest belief." *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997); *Garvis v. Scholten*, 492 N.W.2d 402, 404 (Iowa 1992). In this case, Folkestad's intent to use the property as a vineyard is genuine. He is not incurring the expenses and investing a considerable amount of personal energy to develop Cedar Crest Vineyard just in an attempt to receive an agricultural classification for his property. His efforts prior to the assessment date are further bolstered by his actions following the assessment date – purchasing additional equipment; replanting damaged vines and over-planting to ensure the vineyard's success.

Previously, we have also heard arguments, though not in this case, that in considering good faith, certain factors must be used. *See Polk County Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155049 (Iowa Ct. App. 2010) (unpublished); *Polk County Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155273 (Iowa Ct. App. 2010) (unpublished). These "factors" were referenced in the *Colvin* case related to "good faith." *Colvin v. Story County Bd. of Review*, 653 N.W.2d 345, 349 (Iowa 2002). The Supreme Court noted, however, that the use of these factors was challenged as not within the contemplation of Iowa Administrative Code rule 701-71.1(1), but it did "not reach this issue" because the appellants did not appeal an earlier assessment to the Court. *Id.* at n.3. The Court of Appeals has twice agreed that the Supreme Court did not determine whether the factors were valid considerations. *Id.* We, therefore, decline to rely solely on those factors in the absence of a finding of their validity and in light of "primary use" being the guidepost in our statutes, case law, and rules for land classification. *Id.*

However, even if this Board were to consider those factors to determine whether Folkestads in "good faith" were using the property for agricultural purposes, the Board's finding would be the same: the parcel is not awaiting development, rather it is being used for both agricultural purposes – growing grapes – and residential purposes with the Folkestad homestead on it; both agricultural and residential uses are permitted under current zoning; the property may be viewed in the marketplace either as an agricultural or residential property – we note there was no testimony regarding this issue; the land surrounding the property is used primarily for agricultural purposes; Folkestad filed Federal Schedule F forms for 2005 through 2010 demonstrating agricultural activity, however they demonstrate a taxable loss from an income standpoint and the old farm house does currently produce rental income; finally, we decline to determine the highest and best use as again, there is no testimony regarding this issue. If it would be necessary to consider these factors as a test of good faith, this Board still determines that the property is being used in good faith for agricultural purposes as a vineyard.

Finally, a second requirement not directly part of the vineyard subparagraph is that there is an intent to profit. If this requirement is also part of determining whether a vineyard is properly classified agricultural, we determine Folkestad's vineyard is operating with an intent to profit from the activity. Although Folkestad's currently only harvesting grapes from an arbor on the back of his home and using these grapes to make his own wine, he is taking necessary steps to realize a profit from Cedar Crest Vineyard once it is mature. Folkestad has no intent to be a winery, making and selling his own wine. Rather, the purpose of Cedar Crest Vineyard is to grow and sell the grapes to other wineries. Folkestad attempted to start the vineyard, but was ill-equipped to do so and lacked funding at the beginning. He did, however, start approximately two acres of grapes prior to the assessment date despite these limitations. In three to five years, once these grapes are mature, and now that they are properly trellised, Folkestad testified it is his intent to profit. As previously noted, one acre of grapes, on average, produces three tons of grapes worth $1000 per ton.

Following Iowa law and administrative rules governing the classification of real estate, we find the Folkestads' property is properly classified agricultural as its primary use is as a vineyard. The preponderance of the evidence in the record demonstrates Folkestads' effort to maintain a vineyard as the primary use of the land prior to January 1, 2011, and supports the claim that the property is misclassified.

THE APPEAL BOARD ORDERS the January 1, 2011, assessment of the Folkestads' property located at 2252 N Scotch Ridge Road, Carlisle, Iowa, is classified agricultural realty. The assessed value of the two dwellings shall not change. In order to properly value the property as agricultural realty, we order the Board of Review to determine the agricultural land value and agricultural building values using the appropriate method prescribed by law and report those values to this Board within 20 days of the date of this Order. Once those values are provided we will enter an order accordingly and

the Warren County Auditor shall correct all tax records, assessment books, and other recordings pertaining to the assessment referenced herein.

Dated this 23 day of February, 2012.

Karen Oberman, Presiding Officer

Richard Stradley, Board Chair

Jacqueline Rypma, Board Member

Copies to:

Robert K. & Heidi Linn Folkestad
2252 N Scotchridge Road
Carlisle, Iowa 50047
APPELLANT

John Criswell
301 North Buxton, Ste. 301
Indianola, IA 50125
ATTORNEY FOR APPELLEE

Brian Arnold
301 N Buxton, Ste. 108
Indianola, IA 50125
REPRESENTATIVE FOR APPELLEE

Traci VanderLinden
Warren County Auditor
301 N. Buxton, Ste 101
Indianola, IA 50125
AUDITOR

Certificate of Service
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 2-23, 2012
By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other
Signature